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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

PROTON ASSOCIATES LLC, and
SETH MILLER,

Plaintiffs,

vs.

AVELO, INC.,

Defendant.

Case No.:

COMPLAINT

BRAVO SCHRAGER_{LLP}

Preliminary Statement

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2 1. Defendant Avelo Airlines Incorporated is an airline that primarily
3 operates low-cost passenger service between small regional airports. In April of this
4 year, Avelo signed a contract with the United States Immigration and Customs
5 Enforcement Agency (ICE) to “support the Department’s deportation efforts.” Avelo
6 provides this support by flying migrants out of the country from a base in Mesa,
7 Arizona.

8 2. Avelo’s decision to support the government’s deportation efforts
9 caused many people across the country to protest the airline. The New Haven
10 Immigrants Coalition circulated an online petition calling for a boycott. Protesters
11 picketed in front of airports in Connecticut, Delaware, California, and Florida. The
12 union representing Avelo’s flight attendants issued a statement. And the governors
13 of Connecticut and Delaware denounced Avelo.

14 3. Plaintiff Seth Miller joined this effort by starting a campaign called
15 the AvGeek Action Alliance, which urges travelers to choose airlines consistent with
16 their political values. As part of this campaign, Miller leased two billboards on the
17 road to Avelo’s hub in New Haven reading “Does your vacation support their
18 deportation? Just say AvelNO! Paid for by AvGeek Action Alliance – avelNO.com.”
19 The word “AvelNO” in the ad is a parody of Avelo’s blue-text trademark, with the “N”
20 inserted between the “L” and the “O” in red. Miller’s purpose in buying the billboard
21 was, unsurprisingly, not to identify airline tickets for sale, but rather to criticize
22 Avelo.

23 4. In response, Avelo did not start its own advertising campaign,
24 explain why Miller is wrong to the public, change its business, or do any of the
25 innumerable other things it could do to contest speech it does not like. Instead, Avelo
26 sent Miller a letter threatening to sue him for copyright, trademark, and trade-dress
27 infringement if he did not provide “signed, written assurances” that he would stop
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1 voicing his own speech by 5pm on Friday, May 16. The letter warned Miller that he
2 may personally face “statutory damages of up to \$150,000 per infringement”
3 alongside “attorney’s fees and costs.” Avelo then sent a letter to the company from
4 which Miller is leasing the billboards threatening *them* with liability and causing
5 them to take the billboards down.

6 5. Miller brings this Action seeking a declaratory judgment that his
7 campaign does not infringe Avelo’s trademarks, trade dress, or copyright, which it
8 does not for at least three reasons. First, Miller’s speech cannot possibly infringe
9 Avelo’s marks because it is entitled to protection under the *Rogers* First Amendment
10 test—Miller’s speech does not function as a trademark, it clearly mocks Avelo’s
11 trademark, and it is therefore paradigmatic protected speech. Second, Miller’s speech
12 was not “in connection with” the sale of goods or services as required by the trademark
13 laws under clear Ninth Circuit precedent. And, finally, Miller’s speech was a textbook
14 example of nominative fair use (for both trademark and copyright purposes) and
15 could not possibly have confused any reasonable person about the source of airline
16 passenger service. Miller also seeks relief from Avelo’s tortious interference with his
17 billboard contract.

18 6. Avelo is free to disagree with Miller, to criticize him, and to advocate
19 its position to the public. It is free to call Miller a naif, a fool, or worse. But it is not
20 free to use baseless threats of litigation to suppress Miller’s criticism. This Court
21 should declare that Miller does not violate Avelo’s copyright, trademark, and trade
22 dress, and allow the public to continue seeing Miller’s free speech.

23 Parties

24 7. Plaintiff Proton Associates LLC is a limited-liability company formed
25 under the laws of New Hampshire and headquartered in Dover, New Hampshire. It
26 does business as AvGeek Action Alliance. Plaintiff Seth Miller formed and partly
27 owns Proton. He is a resident of Dover, New Hampshire. (This Complaint collectively
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1 refers to Plaintiffs as “Miller.”)

2 8. Defendant Avelo Incorporated is a corporation formed under the laws
3 of Nevada and headquartered in Houston, Texas.

4 **Jurisdiction and Venue**

5 9. This Court has subject-matter jurisdiction over the federal claims in
6 this action pursuant to 28 U.S.C. § 1331 and § 1338 because they arise under the
7 Lanham Act and the Copyright Act.

8 10. This Court may exercise supplemental subject-matter jurisdiction
9 over the state claims in this action pursuant to 28 U.S.C. § 1367, and also has subject
10 matter jurisdiction over the state claims in this action pursuant to 28 U.S.C. § 1332
11 because neither Miller nor any other member of Proton Associates LLC is a citizen of
12 Nevada or Texas.

13 11. This Court may exercise general personal jurisdiction over Avelo
14 because Nevada is its state of incorporation.

15 12. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because
16 this is a judicial district in which Avelo “resides” as defined by 28 U.S.C. § 1391(c)(2).

17 13. This Court may enter a declaratory judgment under 28 U.S.C. § 2201
18 because Avelo’s letter created an actual controversy by putting Miller in a reasonable
19 apprehension of being sued for trademark and copyright infringement.

20 **Avelo’s Business and The Protests it Occasioned**

21 14. Avelo is the successor to Casino Express Airlines and Xtra Airways,
22 carriers that had operated charter flights since the 1980’s. Avelo rebranded and
23 began operating scheduled commercial service in 2021. Later that year, Avelo
24 announced that it would begin commercial service from Tweed New Haven Airport,
25 which then did not have any commercial service. Since 2021, Tweed has become
26 Avelo’s largest base.

1 15. In April of this year, Avelo signed a contract with ICE to operate
2 what Avelo calls “deportation flights.” According to the New York *Times*, “ICE
3 outsources many flights” to “little-known charter airlines,” but “[c]ommercial carriers
4 typically avoid this kind of work so as not to wade into politics and upset customers
5 or employees.” Niraj Choksi, *Avelo Airles Faces Backlash for Aiding Trump’s*
6 *Deportation Campaign*, N.Y. TIMES, May 12, 2025, at B5. But Avelo is struggling
7 financially and so, according to Avelo’s founder and chief executive, the money Avelo
8 could stand to make operating deportation flights is too good to pass up. *Id.*

9 16. The decision to operate deportation flights prompted swift and
10 widespread protests from passengers, immigration groups, unions, and elected
11 officials. *Id.* Avelo responded to these protests with a statement to the *Times*: “We
12 realize this is a sensitive and complicated topic. After significant deliberations, we
13 determined the charter flying will provide us with the stability to continue expanding
14 our core scheduled passenger service and keep our more than 1,100 crew members
15 employed for years to come.”

16 17. To Miller’s knowledge, Avelo has not attempted to voice any other
17 response to the criticism it faces.

18 Miller’s Campaign

19 18. Miller is a journalist who covers the aviation industry. (He also
20 represents Strafford County District 21 in the New Hampshire State House.)

21 19. Miller disagrees with Avelo’s decision to assist in the government’s
22 deportation efforts.

23 20. When protests of Avelo began popping up at airports Avelo serves,
24 Miller wanted to join in. He specifically wanted to make sure passengers knew that
25 Avelo was using its planes to deport people and to pressure Avelo to reconsider that
26 decision.

27 21. To do that, Miller created the AvGeek Action Alliance (with
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1 “AvGeek” as shorthand for “Aviation Geek”) and set out to raise money to support the
2 purchase of a billboard criticizing Avelo.

3 22. Miller began by creating avelNO.com. A permanent link to the site
4 as it appeared on May 14, 2025, is available at <https://perma.cc/R2XY-Q9LP>.

5 23. AvelNO.com could not possibly, by any stretch of the imagination, be
6 confused for a website created by Avelo. For starters, it currently begins—right at the
7 top of the page—with the phrase “avelNO.com is not associated with Avelo the
8 airline.” It then helpfully directs would-be Avelo customers to avelo.com in case they
9 stumbled upon avelno.com by accident and are looking for plane tickets. The site goes
10 on to clearly criticize Avelo, explaining its April 2025 contract with ICE and saying
11 that “Picking a business that puts profits ahead of humanity is a bad choice.” “That’s
12 why,” the site continues, “we’re asking you to just say ‘avelNO!’ and not fly with Avelo
13 until it stops operating charters for ICE.”

14 24. Miller quickly raised enough money to rent out two billboards on the
15 way to Tweed Airport.

16 25. On April 25, 2025, Miller entered a contract with Lamar Advertising
17 Corporation to lease three billboards, one from May 5 to May 25, one from May 5 to
18 June 1, and one from June 2 to June 15.

19 26. The first two billboards went up on May 5, 2025.

20 27. Exhibits A and B are true and correct images of the billboards.

21 28. As with Miller’s website, no reasonable person could confuse this
22 billboard for an Avelo advertisement. It prominently declares that it is paid for by
23 AvGeek Aviation Alliance, and it prominently criticizes Avelo. The billboard is
24 obviously a parody.

25 **Avelo’s Litigation Threat**

26 29. On May 12, 2025, Miller received a FedEx package at his home in
27 Dover. The package was from Drew Smith, *esq.*, a lawyer at a firm called Resonate
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1 IP in Bend, Oregon.

2 30. In the package was a letter, which Miller also received by email. The
3 letter is attached as Exhibit C.

4 31. In the letter, Smith contends that “the blatant use of our client’s
5 trademarks and trade dress with ‘*The avelNo! campaign*,’ and associated websites,
6 billboards, and marketing material, constitutes deliberate and willful trademark
7 infringement and unfair competition.” Specifically, Smith contends that because
8 “AvGeek’s websites actively solicit contributions” and because “the billboard display
9 . . . is a deliberate attempt to interfere with Avelo’s air transportation services” that
10 means that “the unauthorized use of our client’s trademarks constitutes commercial
11 speech in commerce and falls within the jurisdictional purview of the Lanham Act.”
12 Smith further contends that “[t]he mutilation of our client’s well-known house mark
13 AVELO also constitutes dilution by tarnishment under the Federal Trademark
14 Dilution Act, 15 U.S.C. § 1125(c).” Smith reports, without citing any specific example,
15 that “We have already been notified of instances of actual confusion wherein
16 consumers have mistakenly believed that the billboard is sponsored or affiliated with
17 Avelo, demonstrating that confusion is not only likely but inevitable.”

18 32. Smith then demands that Miller “*immediately* cease,” and provide
19 “signed written assurances” that it will not resume, “all use of the AVELO marks,
20 logos, designs, and trade dress” and that it “remove all copyrighted pictures of Avelo
21 aircraft” (Emphasis in original.) Smith threatens Miller with personal liability
22 for three times the amount of money he raised on the website, statutory damages of
23 \$150,000 per alleged infringement, and attorneys’ fees and costs. “To avoid any
24 escalation of this matter,” Smith writes, “we ask that you provide your written
25 response to this letter *no later than 5:00 pm on Friday, May 16, 2025*.” (Emphasis in
26 original.)

27 33. Smith’s litigation threat is extraordinary. He cites only three cases
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1 in support of his positions, all of which are more than 25 years old and one of which
2 has been negatively cited by controlling cases. He cites a rationale for applying the
3 Lanham Act to campaigns like Miller’s that governing precedent explicitly rejects.
4 *Compare* Ex. A at 3 (arguing that Miller’s parody of Avelo’s mark is “in connection
5 with” the sale of goods or services because it is “a deliberate attempt to interfere with
6 Avelo’s air transportation services” (citing *Planned Parenthood Fed. of Am., Inc. v.*
7 *Bucci*, 1997 WL 1333133 (S.D.N.Y. 1997)), *with Bosley Med. Inst., Inc. v. Kremer*, 403
8 F.3d 672, 679 (9th Cir. 2005) (“To the extent that [courts have] held that the Lanham
9 Act’s commercial use requirement is satisfied because the defendant’s use of the
10 plaintiff’s mark . . . may deter customers from reaching the plaintiff’s [goods or
11 services], we respectfully disagree with that rationale, . . . [which would] would
12 encompass almost all uses of a registered trademark, even when the mark is merely
13 being used to identify the object of consumer criticism.”). He wrongly cites the “use in
14 commerce” clause when the question he references is in fact governed by the “use in
15 connection with the sale of goods” clause of the Lanham Act. *Id* at 677. And he cites
16 the Trademark Dilution Act without mentioning that the act *explicitly exempts*
17 *parodies* where they are not used to identify the defendant’s goods, as explained in a
18 Supreme Court case only two years ago. *See Jack Daniel’s Properties, Inc. v. VIP*
19 *Products LLC*, 599 U.S. 140, 162 (2023) (“As described earlier, the ‘fair use’ exclusion
20 [from the Trademark Dilution Act] specifically covers uses ‘parodying, criticizing, or
21 commenting upon’ a famous mark owner.”).

22 34. Perhaps most extraordinary, the letter threatens statutory damages
23 for copying a “photograph” of Avelo’s “tail.” But Avelo does not own the copyright in
24 that photograph—it was taken by a third party and Miller is authorized to use it.
25 Even if Avelo meant to allege that the tail *design* is copyrighted, statutory damages
26 for copyright violations are available only when the copyright has been previously
27 registered. 17 U.S.C. § 412. After a diligent search, Miller’s counsel can find no
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1 evidence that Avelo ever registered a copyright in that design, and, based on a recent
2 case regarding registration of airline tail designs, it appears unlikely that Avelo could
3 register its design, which is little more than a few colored, curved lines. The threat of
4 \$150,000 statutory damages is, therefore, objectively baseless.

5 35. The letter was addressed to Miller at a time when he did not have
6 counsel, and it threatens him with devastating personal liability.

7 36. Resonate IP, according to its website, “is a full-service intellectual
8 property firm specializing in all aspects of trademarks and brand protection.” Smith
9 reports that he is an active member of the International Trademark Association and
10 that he is experienced in trademark litigation.

11 37. Avelo subjectively knew that its litigation threats were baseless.

12 38. Smith’s letter is an attempt to use meritless legal contentions to
13 silence criticism of Avelo during a period of intense political dispute over its actions.

14 39. Miller does not want to cease his constitutionally protected speech.

15 **Avelo Threatens The Company Leasing Miller The Billboards**

16 40. On May 14, 2025, Miller received a call from Lamar, the company
17 from which he had leased the billboards.

18 41. According to Lamar, Avelo sent Lamar a letter on May 9. That letter
19 is attached as Exhibit D.

20 42. Avelo’s letter to Lamar makes the same objectively baseless threats
21 that Avelo’s letter to Miller makes.

22 43. Avelo’s letter is also signed by Smith and on Resonate IP letterhead.

23 44. On information and belief, Avelo, as advised by Smith, knows that
24 its litigation threats to Lamar are baseless.

25 45. On information and belief, Avelo sent its May 9 letter to Lamar
26 because it believed that Lamar would take down the billboards merely to avoid the
27 process of litigation.

1 trademark infringement sufficient to defeat Miller's First Amendment rights, then,
2 Avelo would have to show that Miller's challenged use of Avelo's mark has no
3 relevance to Miller's protest or that it explicitly misleads as to the source or content
4 of Miller's protest. Miller's speech does not do these things, and so is protected by the
5 First Amendment.

6 57. Miller's website and billboard were not commercial because their
7 purpose was not to sell a competing product or service but rather to criticize Avelo.

8 58. Miller's website and billboard could not cause a likelihood of
9 confusion because they are unquestionably parodies on their face and they explicitly
10 and prominently disclaim any association with Avelo.

11 59. In the alternative or additionally, Miller's website and billboard
12 constitute a nominative fair use of Avelo's mark because they criticize, parody, and
13 comment on Avelo's business.

14 60. A declaratory judgment is proper under 28 U.S.C. § 2201 because
15 Avelo's letter and Miller's intent to continue his speech create an actual controversy
16 and this Court may "declare the rights" of Miller to continue that speech without
17 liability.

18 ***Count Three: Declaratory Judgment That Miller's Speech Does Not Infringe***
19 ***Avelo's Trade Dress Through Dilution Under 15 U.S.C. § 1125(c)***

20 61. Miller incorporates all prior paragraphs by reference.

21 62. Miller's website and billboard did not constitute a designation of
22 source or identification of any of Miller's goods or services.

23 63. Miller's website and billboard "identify[], parody[], criticiz[e], or
24 comment[] upon" Avelo.

25 64. Miller's website and billboard therefore cannot constitute dilution
26 through tarnishment under 15 U.S.C. § 1125(c).

27 65. A declaratory judgment is proper under 28 U.S.C. § 2201 because
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1 Avelo's letter and Miller's intent to continue his speech create an actual controversy
2 and this Court may "declare the rights" of Miller to continue that speech without
3 liability.

4 ***Count Four: Tortious Interference With Business Expectancy***

5 66. Miller incorporates all prior paragraphs by reference here.

6 67. Miller has a business relationship with Lamar, specifically an
7 ongoing contract to display Miller's speech on Lamar's billboard spaces.

8 68. Avelo, as proven by its letter, knew of Miller's relationship with
9 Lamar.

10 69. Avelo sent its May 9 letter to Lamar for the purpose of inducing
11 Lamar to terminate its relationship with Miller, specifically to get Lamar to take
12 down Miller's billboards.

13 70. Avelo sent its May 9 letter to Miller for the purpose of inducing Miller
14 to take the billboard down.

15 71. The May 9 letters to Lamar and to Miller threatened objectively
16 baseless litigation. Miller's billboards do not, as explained above, infringe Avelo's
17 trademark, trade dress, or copyright because (among other reasons) they are
18 obviously parodies.

19 72. Avelo sent its May 9 letters to Lamar and to Miller subjectively
20 knowing that its litigation threats were baseless. Instead, Avelo sent the letter
21 because it correctly believed that Lamar would wish to avoid the burdens of litigation
22 with Avelo and would take down Miller's billboards for that reason.

23 73. Avelo therefore sent its May 9 letter maliciously and improperly.

24 74. As a result of Avelo's letter, Lamar took down Miller's billboards,
25 depriving him of the benefit of his relationship with Lamar and harming him.

26 75. Avelo's actions therefore constitute tortious interference with
27 economic expectancy under Connecticut law.

Prayer for Relief

Plaintiffs Proton Associates LLC and Seth Miller respectfully request:

A. A declaratory judgment that neither Proton Associates LLC nor Seth Miller is liable to Defendant Avelo Incorporated for copyright infringement.

B. A declaratory judgment that neither Proton Associates LLC nor Seth Miller is liable to Defendant Avelo Incorporated for trademark infringement.

C. A declaratory judgment that neither Proton Associates LLC nor Seth Miller is liable to Defendant Avelo Incorporated for trade dress infringement.

D. An injunction forbidding Avelo from further tortiously interfering with Proton Associates LLC's economic relationship with Lamar Advertising Corporation by threatening Lamar with litigation regarding the content of Miller's billboards.

E. A judgment awarding damages against Avelo for tortiously interfering with Proton Associates LLC's economic relationship with Lamar Advertising Corporation.

F. An award of attorneys' fees and costs under 15 U.S.C. § 1117(a), Fed. R. Civ. P. 54, or any other applicable provision.

G. Any other relief deemed just and proper.

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Jury Trial Demanded

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues so triable.

DATED this 16th day of May, 2025.

BRAVO SCHRAGER LLP

Bv: /s/ Bradley S. Schrager

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